

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1136 of 1998****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to
see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the
judgment ?

4 Whether this case involves a substantial question of law
as to the interpretation of the constitution of India,
1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARI @ PRAKASH RAMDAS KOLHE - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MS SADHANA SAGAR for the Appellant.

MR KP RAVAL, APP, for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE
BANKIM.N.MEHTA****Date : 08/02/2007**

ORAL JUDGMENT**(Per : HONOURABLE MR.JUSTICE A.L.DAVE)**

1. The appellant came to be tried and convicted for the offence of murder of Shakuntala alias Mangala, allegedly, committed by him on 27th July, 1996 around 8.15 P.M. on a public road near Jamatkhana, near Karimabad Society, at Surat, by inflicting knife injury. He came to be sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- and, in default thereof, to undergo further imprisonment for a period of six months, by Sessions Court, Surat, vide judgment and order dated 26th November, 1998, rendered in Sessions Case No.267 of 1996.

2. The case of the prosecution is that the appellant and deceased-Shakuntala alias Mangala were staying together as husband and wife. The appellant wanted to go to his hometown whereas the deceased was against that and there were quarrels between the two on this count. On the day of the incident, deceased-Shakuntala was found lying on road in an injured condition by witness Sameer Barkatali Veerani (Exhibit 27) and his brother, Nazeer Barkatali Veerani, when they were passing by the

area. The victim told them to take her to hospital. She said that she was having pain in the stomach. In the meantime, Saif Shirajali Kapadia came there and then he brought an auto-rickshaw. The lady then occupied the rickshaw and Sameer Veerani and Saif Kapadia followed her on scooter. They got her admitted to Civil Hospital. While she was at the hospital, she told in Hindi “Mera Marad'ne Mujeh Mara Hai”. The lady was given treatment, but, ultimately, succumbed to the injury. Simultaneously, police was informed and a First Information Report was registered. On registration of the crime, investigation was started and the police, having found sufficient evidence to connect the appellant with the offence, filed charge sheet in the Court of learned Judicial Magistrate, First Class, Surat, who, in turn, committed the case to the Court of Sessions and Sessions Case No.267 of 1996 came to be registered.

2.1 The Trial Court, after considering the evidence led by the prosecution, came to a conclusion that the prosecution was successful in establishing the charges against the appellant accused and, therefore, recorded conviction for the offence of murder and awarded sentence as stated above. Aggrieved by the said judgment

and order, present appeal is preferred by the convict.

3. Learned Advocate, Ms. Sadhana Sagar, appearing for the appellant submitted that the case is of circumstantial evidence. There is no direct evidence on the occurrence. Ms. Sagar submitted that the oral dying declaration of the deceased is given undue weightage by the Trial Court overlooking the fact that in the dying declaration, the deceased had disclosed that her “Marad”, i.e. her husband, had caused the injury to her. She submitted that it has come in evidence that the deceased was formerly married to another person and not the appellant. The appellant, therefore, is not the husband of the deceased. The deceased has not named the appellant anywhere. There were witnesses, who were projected to be supporting the prosecution, but have, in fact, at the time of the trial, not supported the prosecution case. Name of the deceased in the medical case papers is indicated as Shakuntala alias Mangala, wife of Prakash, whereas name of the appellant is Hari alias Prakash and nowhere it is brought on record by the prosecution that the appellant also carries an alias name. Ms. Sagar, therefore, submitted that the prosecution cannot be said to have established a complete chain of circumstances to link the appellant with the

offence. She, therefore, submitted that the Trial Court committed an error in recording conviction and, therefore, the appeal may be allowed.

4. Learned Additional Public Prosecutor, Mr. Raval, has opposed this appeal. According to him, the persons who took the deceased to the hospital or the doctor at the hospital did not know the deceased. Still correct name of the deceased is indicated in the medical certificate as well as postmortem notes. It has come in evidence that the deceased was conscious when she was taken to the hospital. Therefore, necessarily, name of the deceased was given by the deceased herself. This name indicates that she was the wife of Prakash. She has stated in her dying declaration that the injury was caused to her by her husband and, therefore, though the deceased and the appellant may not be lawfully wedded spouses, they did live together as husband and wife and there is also evidence to that effect emerging from the depositions of witnesses. Mr. Raval, therefore, submitted that there is a complete chain of circumstances to connect the appellant with the offence and, therefore, the appeal may be dismissed.

5. We have taken into consideration rival side contentions and have examined the record and proceedings in the context of their submissions.

6. P.W.5-Sameer Barkatali Veerani (Exhibit 27) says that while he and his brother Nazeer were going home passing by the place of incident, they found a lady lying on road. She said that she be taken to hospital. She was speaking in Hindi. Then she said that she was having pain in the abdomen. In the meantime, Saif Shirasali Kapadia brought an auto-rickshaw, in which the lady occupied the seat. The witness and Saif followed her on their scooter to the hospital, where she stated before the doctor “Mere Marad'ne Mujeh Mara Hai”. At that time, he was very much present there.

6.1 Dr. Amrutlal Chhotabai Mayavanshi (Exhibit 42) states that he examined Mangalaben Prakash at about 8.50 P.M. on 27th July, 1996 and noticed a stab wound of the size of 2 cm. x ¼ cm. x cavity deep on the right side of abdomen. He says that the patient was fully conscious and she stated that her husband had caused the injury with a knife. The doctor says that the deceased succumbed

to the injury around 2.30 A.M. on 28th July, 1996. He says that the injury found on person of the deceased was possible with muddamal article No.4-knife. The witness has been cross-examined at length, but nothing in favour of the accused turned out.

6.2 We notice that out of the rest of the witnesses, most of them have not supported the prosecution case and have turned hostile, however, the prosecution was successful in bringing on record the contradictions through the deposition of the Investigating Officer. The medical certificate as well as postmortem notes recorded name of the patient as Mangalaben Prakashbhai, aged about 22 years.

6.3 There is evidence of Ravi Mahadev Tegarekar (Exhibit 50). He says that Shakuntala alias Mangala and Prakash alias Hari were staying in a room next to his own room. Around the time of incident, Prakash had told him that he was going to his hometown and, thereafter, he went away. This witness, during cross-examination, has stated that there were many rooms in the Zoppad Patti, where he was staying and he does not know names of many of the occupants. He says that he learnt at a later stage that wife of

Prakash had expired, but he does not not know who were staying with Prakash. He says that, he does not know who assaulted Shakuntalaben.

7. What emerges from the above evidence is that, while the deceased was taken to hospital, she was fully conscious and except her, nobody else knew her name. She gave her name as Mangalaben, wife of Prakash. It also emerges from evidence that before Dr. Mayavanshi, she has stated that the injury was caused to her by her husband. It is not disputed by the appellant that he is known as Hari alias Prakash because he has, in his statement under Section 313 of the Code of Criminal Procedure also, admitted that fact to be true. It has come in evidence that the appellant and the deceased were staying together in a room next to witness Ravi Mahadev. After the incident, the appellant was not available for a long time and came to be arrested from Borhanpur, Madhya Pradesh, on 30th July, 1996, i.e. after about three days, which is a significant conduct. These factors collectively establish that the injury was caused to the deceased by the appellant, who was husband for all practical purposes. Though there may not be evidence of a lawful wedlock between them, the deceased was

indicating him when she referred to her husband (“Marad”). There is no reason to doubt the deposition of doctor about oral dying declaration which implicates the appellant.

8. The evidence of Dr. Kiran Pensuria indicates that the injury was possible with muddamal-knife. The injury was caused in abdominal portion and had gone cavity deep and the main vein was cut. The Trial Court was, therefore, justified in concluding that the appellant committed murder of deceased Shakuntalaben alias Mangala. We do not find any lacuna in the prosecution case nor do we find any error on part of the Trial Court in reaching to the conclusion. We have gone through the judgment and order and are in agreement with the reasonings adopted and conclusions arrived at by the Trial Court. The appeal must fail and stands dismissed. The judgment and order of the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]